

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	Docket No. CAA-05- 2002 -0 013
)	
Kent State University)	Proceeding to Assess a
Kent, Ohio,)	Civil Penalty under
)	Section 113(d) of the
Respondent.)	Clean Air Act,
)	42 U.S.C. § 7413(d)
)	

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Kent State University (KSU), a nonprofit corporation, doing business in the State of Ohio.

Statutory and Regulatory Background

4. On May 27, 1994, U.S. EPA approved OAC Chapter 3745-17 as part of the federally enforceable state implementation plan (SIP) for Ohio. 59 Fed. Reg. 27464 (May 27, 1994).

5. OAC Rule 3745-17-10(C) states, in pertinent part, that any owner or operator of fuel burning equipment which is located within, among other places, Portage County, Ohio, shall operate said equipment so that the particulate emissions do not exceed the allowable emission rate specified by "Curve P-1" of "Figure I".

6. OAC Rule 3745-17-07(A) states, in pertinent part, that visible particulate emissions from any stack shall not exceed twenty percent opacity, as a six-minute average, except visible particulate emissions from any stack may exceed twenty percent opacity, as a six-minute average, for not more than six consecutive minutes in any sixty minutes, but shall not exceed sixty percent opacity, as a six-minute average, at any time.

7. On June 10, 1982, U.S. EPA approved OAC Rule 3745-35-02 as part of the federally enforceable SIP. 47 Fed. Reg. 25144 (June 10, 1982). On June 8, 1999, U.S. EPA approved revisions to OAC Rule 3745-35-02 as part of the federally enforceable SIP. 64 Fed. Reg. 30394 (June 8, 1999).

8. OAC Rule 3745-35-02 states that no person may cause, permit, or allow the operation or other use of any air contaminant source without applying for and obtaining a permit to operate from the Ohio Environmental Protection Agency.

9. In accordance with Section 111 of the Act, 42 U.S.C. § 7411, U.S. EPA published the final rule of the New Source Performance Standards (NSPS), Subpart A, General Provisions, on December 23, 1971. 36 Fed. Reg. 24877 (December 23, 1971). This rule has been codified at 40 C.F.R. §§ 60.1 through 60.19.

10. In accordance with Section 111 of the Act, U.S. EPA promulgated 40 C.F.R. Part 60, Subpart Db, Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units. 52 Fed. Reg. 47842 (December 16, 1987). This rule has been codified at 40 C.F.R. §§ 60.40b through 60.49b.

11. Section 502(a) of the Clean Air Act, 42 U.S.C. § 7661a, states, among other things, that it is unlawful for any person to operate a major source except in compliance with a permit issued pursuant to an approved 40 C.F.R. Part 70 ("Title V") operating permit program.

12. On August 15, 1995, U.S. EPA approved the State of Ohio operating permit program with an effective date of October 1, 1995. 60 Fed. Reg. 42045 (August 15, 1995). See 40 C.F.R. Pt. 70, App. A.

13. The regulation at 40 C.F.R. § 70.6(b)(1) specifies that all terms and conditions in a Part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the U.S. EPA under the Act.

14. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for SIP or Title V permit or NSPS violations that occurred prior to January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1). The Debt Collections Improvements Act of 1996 increased the statutory maximum penalty to \$27,500 per day of violation up to a total of \$220,000 for SIP or Title V permit or NSPS violations that occurred on or after January 31, 1997. 31 U.S.C. § 3701 and 40 C.F.R. Part 19.

15. The Administrator may assess a penalty greater than \$220,000, under Section 113(d)(1), where the Administrator and the Attorney General of the United States jointly determine that

a matter involving a larger penalty is appropriate for an administrative penalty action.

16. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than \$220,000, is appropriate for an administrative penalty action.

17. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

18. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

19. KSU owns and operates a heating plant located at Terrace Drive in Kent, Portage County, Ohio (the Terrace Drive Heating Plant) for the primary purpose of producing heat or power.

20. At all times relevant to the Complaint, the Terrace Drive Heating Plant included the following emissions units: B001,

a coal-fired boiler; B002, a natural gas-fired boiler; and B004, a coal-fired boiler. Each boiler has its own stack.

21. Boiler B001 has a rated heat capacity of 97 mmBTU/hr. Boiler B002 has a rated heat capacity of 143 mmBTU/hr. Boiler B004 has a rated heat capacity of 50 mmBTU/hr.

22. On June 17, 1998, the Ohio Environmental Protection Agency (OEPA) issued Permit to Install (PTI)# 16-01800 to allow KSU to install a new emissions unit, B007, a natural gas-fired boiler, at the Terrace Drive Heating Plant. On May 24, 2000, OEPA issued a permit modification to PTI # 16-01800.

23. Construction of Boiler B007 at the Terrace Drive Heating Plant began on or about April 8, 1998 and ended in September 1998.

24. Boiler B007 is a steam generating unit that has a rated heat capacity of 121 mmBTU/hr.

25. The Terrace Drive Heating Plant emits or may emit air pollutants including, among other things particulates, nitrogen oxides and carbon monoxide.

26. The Terrace Drive Heating Plant is a "stationary source" as defined at 40 C.F.R. § 60.2.

27. Boiler B007 is an "affected facility" as defined at 40 C.F.R. § 60.2.

28. As a steam generating unit that commenced construction, modification or reconstruction after June 19, 1984, and that has a heat input capacity of greater than 100 mmBTU/hr, Boiler B007 is subject to the Standards of Performance for

Industrial-Commercial-Institutional Steam Generating Units at 40 C.F.R. Part 60, Subpart Db.

29. On September 10, 1998, OEPA issued a Title V Permit to KSU for Emissions Units B001, B002 and B004.

30. KSU is required to submit an annual compliance certification by Part I, Section A, Paragraph 12.d. of its Title V Permit.

31. On or about June 21, 1999, KSU began construction on a new power plant located at Summit Street in Kent, Portage County, Ohio (the Summit Street Power Plant). KSU owns and operates the Summit Street Power Plant.

32. On July 8, 1999, OEPA issued PTI # 16-1757 to allow KSU to install three natural gas/oil boilers, i.e., Emissions Units B005, B006 and B007, at the Summit Street Power Plant.

33. In 2001, KSU relocated Boiler B007 from the Terrace Drive Heating Plant to the Summit Street Power Plant.

34. On August 10, 2001 and March 6, 2002, U.S. EPA issued notices of violation/findings of violation to KSU for the violations alleged in the Complaint.

Count I

35. Complainant incorporates paragraphs 1 through 34 of this Complaint, as if set forth in this paragraph.

36. OAC Rule 3745-17-10(C)(1) states that any owner or operator of fuel burning equipment which is located in Portage County shall operate such equipment so that particulate emissions do not exceed the allowable emission rate specified by

"Curve P-1" of "Figure I" (the SIP limit). Curve P-1 has the equation:

$$E = 0.8 \times H^{-0.3019}$$

where E is the particulate matter emission limit in lbs/mmBTU and H is the total heat input for the facility in mmBTU/hr.

37. OAC Rule 3745-17-10(B) provides that "unless otherwise specified in paragraphs (B)(1) to (b)(4) of this rule, the total heat input of all fuel burning units on a plant or premises which are united either physically or operationally shall be the total of the maximum capacities for all such units." OAC Rule 3745-17-10(B)(1) provides that "[a]ny new or existing fuel burning equipment which is fired only with gaseous fuels ... shall not be included ... for purposes of determining the total heat input...."

38. Boilers B001, B002, B004, and B007 are "fuel burning equipment" as defined at OAC Rule 3745-17-01(B)(5).

39. For the Terrace Drive Heating Plant, H equals 147 mmBTU/hr, i.e., the rated heat capacities of Boilers B001 and B004. Therefore, E is calculated as 0.18 lbs/mmBTU.

40. The table in Paragraph A.I.1. of Part III of the Title V Permit (p. 10) requires KSU, among other things, to limit the emissions from Boiler B001 to 0.18 pounds of particulate matter/per million BTU actual heat input.

41. Between December 30, 1998 and January 3, 2001, KSU conducted stack tests to determine the particulate emission rate

from Boiler B001. The test results and the applicable emission limits are:

Date of Test	Boiler	Average Emission Rate (lb/MMBtu)	Emission Limit (lb/MMBtu)
12/30/98	B001	0.60	0.18
1/13/99	B001	0.54	0.18
7/16/99	B001	0.18	0.18
1/3/01	B001	0.21	0.18

42. In the annual compliance certifications submitted by KSU for calendar years 1998 and 1999, KSU reports deviation from OAC 3745-17-10(C), the requirement that particulate matter (PM) emission not exceed 0.18 lbs/mmBTU, at Boiler B001 for the time period December 30, 1998 through July 16, 1999.

43. KSU permanently ceased operating Boiler B001 on March 9, 2001.

44. KSU failed to comply with the allowable emission rate of 0.18 lbs/mmBTU for PM at Boiler B001 from December 30, 1998 through July 15, 2001 and from January 3, 2001 through March 8, 2001.

45. KSU's failure to comply with the allowable emission rate of 0.18 lbs/mmBTU for particulates for Boiler B001 is a violation of OAC Rule 3745-17-10(C)(1) and the Title V Permit.

Count II

46. Complainant incorporates paragraphs 1 through 45 of this Complaint, as if set forth in this paragraph.

47. OAC Rule 3745-17-07(A) states, in pertinent part, that visible particulate emissions from any stack shall not exceed twenty percent opacity, as a six-minute average, except visible particulate emissions from any stack may exceed twenty percent opacity, as a six-minute average, for not more than six consecutive minutes in any sixty minutes, but shall not exceed sixty percent opacity, as a six-minute average, at any time.

48. The table in Paragraph A.I.1 of Part III of the Title V Permit (p. 10) requires KSU, among other things, to not exceed 20% opacity as a six-minute average from Boiler B001, except as provided by rule.

49. From June 10, 1997 through March 18, 2001 an inspector from the Akron Regional Air Quality Management District (ARAQMD) performed periodic visual emissions readings of the emissions exiting the Boiler B001 stack.

50. The inspectors from ARAQMD found that emissions from the Boiler B001 stack exceeded 20 percent opacity for 197 six-minute periods not exempt from September 17, 1997 through February 12, 2001. The emissions readings are tabulated below:

Date	# of sets	six-min avgs >20%	#of violations	High 6-min avg
02/12/01	10	5	4	21.8
01/03/01	15	15	12	49.1
10/11/00	7	7	6	30.0
09/20/00	10	7	6	26.9
08/28/00	10	10	9	25.6
07/25/00	10	10	9	27.5
06/07/00	10	9	8	25.8
04/25/00	10	10	9	31.6
03/21/00	10	10	9	27.0
01/11/00	10	9	8	26.8
09/25/99	10	10	9	39.5
08/11/99	10	10	9	37.5
07/08/99	10	10	9	52.0
06/22/99	10	10	9	44.5
04/27/99	10	6	5	27.9
03/16/99	10	10	9	51.6
12/30/98	11	11	9	35.0
12/09/98	10	10	9	56.8
03/18/98	10	8	7	22.9
02/11/98	10	8	7	34.1

01/21/98	10	10	9	34.3
12/03/97	10	10	9	32.0
10/15/97	10	10	9	57.2
09/17/97	10	9	8	25.0
Total	243	224	197	

51. KSU's opacity readers found that opacity from the Boiler B001 stack exceeded 20 percent (not exempted) on the following days:

Calendar Year 1998:

November 7, November 8, November 9, December 14, December 16, December 22;

Calendar Year 1999:

January 20, January 22, January 27, February 10, February 11, February 16, February 19, February 22, March 15, April 1, April 8, April 14, April 29, July 13, August 2, August 15, December 2, December 9, December 15;

Calendar Year 2000:

February 23, February 28, September 27, October 12;

Calendar Year 2001:

March 12.

52. KSU failed to comply with the 20% opacity limit at Boiler B001 from August 20, 1997 through March 12, 2001 on the dates specified in paragraphs 50 and 51 above.

53. KSU's failure to comply with the 20% opacity limit at Boiler B001 from August 20, 1997 through September 9, 1998 is a violation of OAC Rule 3745-17-07.

54. KSU's failure to comply with the 20% opacity limit at Boiler B001 from September 10, 1999 through March 12, 2001 is a violation of OAC Rule 3745-17-07 and the Title V Permit.

Count III

55. Complainant incorporates paragraphs 1 through 54 of this Complaint, as if set forth in this paragraph.

56. OAC Rule 3745-17-07(A) states, in pertinent part, that visible particulate emissions from any stack shall not exceed twenty percent opacity, as a six-minute average, except visible particulate emissions from any stack may exceed twenty percent opacity, as a six-minute average, for not more than six consecutive minutes in any sixty minutes, but shall not exceed sixty percent opacity, as a six-minute average, at any time.

57. The table in Paragraph A.I.1 of Part III of the Title V Permit (p. 19) requires KSU, among other things, to not exceed 20% opacity as a six-minute average from Boiler B004, except as provided by rule.

58. From April 29, 1998 through March 19, 2001 an inspector from the Akron Regional Air Quality Management District (ARAQMD) performed periodic visual emissions readings of the emissions exiting the Boiler B004 stack.

59. The inspectors from ARAQMD found that emissions from the Boiler B004 stack exceeded 20 percent opacity for 88 six-minute periods not exempt from April 29, 1998 through March 19, 2001. The emissions readings are tabulated below:

Date	# of sets	six-min avgs >20%	#of violations	High 6-min avg
3/19/01	10	10	9	42.2
3/21/00	10	10	9	27.0
12/1/99	10	10	9	32.9
11/3/99	10	10	9	24.7
10/26/99	6	6	5	28.5
2/3/99	10	10	9	48.7
11/5/98	10	10	9	37.9
10/26/98	10	6	5	27.9
7/15/98	10	9	8	38.1
6/9/98	10	4	3	22.2

5/14/98	10	10	9	39.1
4/29/98	10	5	4	23.5
Total	116	100	88	

60. KSU's opacity readers found that opacity from the Boiler B004 stack exceeded 20 percent (not exempted) on the following days:

Calendar Year 1998:

October 30, November 3, November 4;

Calendar Year 1999:

January 20, February 23, May 3, May 4, May 9, December 15;

Calendar Year 2000:

February 23, August 13;

Calendar Year 2001:

March 12, 2001.

61. KSU failed to comply with the 20% opacity limit at Boiler B004 from April 29, 1998 through March 12, 2001 on the dates specified in paragraphs 59 and 60 above.

62. KSU's failure to comply with the 20% opacity limit at Boiler B004 from April 29, 1998 through September 9, 1998 is a violation of OAC Rule 3745-17-07.

63. KSU's failure to comply with the 20% opacity limit at Boiler B004 from September 10, 1999 through March 12, 2001 is a violation of OAC Rule 3745-17-07 and the Title V Permit.

Count IV

64. Complainant incorporates paragraphs 1 through 63 of this Complaint, as if set forth in this paragraph.

65. The ninth paragraph, "Permit to Operate Application", of the General Terms and Condition of PTI # 16-01800, states, "A

Permit to Operate application must be submitted to the appropriate field office for each air contaminant source in this Permit to Install. In accordance with OAC Rule 3745-35-02, the application shall be made at least 90 days prior to start-up of the source."

66. Boiler B007 is an "air contaminant source" as defined at OAC Rule 3745-35-01(B)(1).

67. Boiler B007 was initially fired at the Terrace Drive Heating Plant on October 21, 1998.

68. Boiler B007 was started up at the Terrace Drive Heating Plant on October 21, 1998.

69. PTI # 16-01800 required KSU to submit an application for a Permit to Operate by July 23, 1998.

70. KSU failed to submit an application for a Permit to Operate Boiler B007 by July 23, 1998.

71. KSU submitted an application for a Permit to Operate Boiler B007 on or about March 21, 2000.

72. KSU's failure to submit an application for a Permit to Operate Boiler B007 at least 90 days prior to start-up is a violation of the ninth paragraph of the General Terms and Conditions of PTI #16-01800 and OAC Rule 3745-35-02.

Count V

73. Complainant incorporates paragraphs 1 through 72 of this Complaint, as if set forth in this paragraph.

74. The paragraph entitled Permit to Operate Application of the General Permit Conditions of PTI 16-1757 states, "A Permit to Operate application must be submitted to the appropriate field office for each air contaminant source in this Permit to Install. In accordance with OAC Rule Rule 3745-35-02, the application shall be filed no later than thirty days after commencement of operation."

75. Boiler B006 is an "air contaminant source" as defined at OAC Rule 3745-35-01(B)(1).

76. Boiler B006 was initially fired at the Summit Street Power Plant on January 22, 2001.

77. Boiler B006 commenced operation at the Summit Street Power Plant on January 22, 2001.

78. PTI 16-1757 required KSU to submit an application for a Permit to Operate Boiler B006 no later than February 21, 2001.

79. KSU failed to submit an application for a Permit to Operate Boiler B006 by February 21, 2001.

80. KSU submitted an application for a Permit to Operate Boiler B006 on or about November 14, 2001.

81. KSU's failure to submit an application for a Permit to Operate Boiler B006 no later than thirty days after commencement of operation is a violation of the PTI 16-1757 and OAC Rule 3745-35-02.

Count VI

82. Complainant incorporates paragraphs 1 through 81 of this complaint, as if set forth in this paragraph.

83. Paragraph C.3. of the Additional Special Terms and Conditions of PTI # 16-01800 states that KSU shall install, calibrate, maintain and operate a continuous emission monitoring (CEM) system for measuring nitrogen oxide emissions discharged to the atmosphere. Paragraph E.1.c. of the Additional Special Terms and Conditions of PTI # 16-01800 states that KSU shall conduct performance testing as required under 40 C.F.R. § 60.46b, in accordance with 40 C.F.R. § 60.8, using the CEM system for monitoring nitrogen oxides under 40 C.F.R. § 60.48b.

84. 40 C.F.R. § 60.8(a) requires the owner or operator of an affected facility to conduct a performance test not later than 180 days after the initial startup of such facility.

85. 40 C.F.R. § 60.46b(e) provides that to determine compliance with the emission limits for nitrogen oxides, the owner or operator of an affected facility shall conduct the performance test as required under § 60.8 using the continuous system for monitoring nitrogen oxides under § 60.48b.

86. Boiler B007 was initially fired at the Terrace Drive Heating Plant on October 21, 1998.

87. "Startup" of Boiler B007 as defined at 40 C.F.R. § 60.2 occurred on October 21, 1998.

88. 40 C.F.R. § 60.8 and PTI # 16-01800 required KSU to conduct a performance test on Boiler B007 not later than April 21, 1999.

89. KSU failed to conduct a performance test on Boiler B007 using the CEM system from the time it was initially fired on

October 21, 1998 until it was permanently shut down at the Terrace Drive Heating Plant on May 6, 2001.

90. KSU's failure to conduct a performance test on Boiler B007 using the CEM system is a violation of paragraph E.1.c. of the Special Terms and Conditions of PTI # 16-01800 and 40 C.F.R. § 60.8(a).

Count VII

91. Complainant incorporates paragraphs 1 through 90 of this Complaint, as if set forth in this paragraph.

92. Section A.V.2 of Part III, Terms and Conditions for Emissions Unit B001, of the Title V Permit (p. 12), requires KSU, among other things, to conduct emissions testing on Emissions Unit B001 within 3 months after the permit's issuance to demonstrate compliance with the allowable mass emission rate for PM.

93. KSU was required to conduct emissions testing on Emissions Unit B001 by December 10, 1998.

94. KSU failed to conduct emissions testing on Emissions Unit B001 by December 10, 1998.

95. KSU conducted emissions testing on Emissions Unit B001 on December 30, 1998.

96. KSU's failure to conduct emissions testing on Emissions Unit B001 within 3 months after the issuance of the Title V Permit is a violation of Section A.V.2 of Part III, Terms and Conditions for Emissions Unit B001, of the Title V Permit.

Count VIII

97. Complainant incorporates paragraphs 1 through 96 of this Complaint, as if set forth in this paragraph.

98. Section A.V.2 of Part III, Terms and Conditions for Emissions Unit B004, of the Title V Permit (p. 19), requires KSU, among other things, to conduct emissions testing on Emissions Unit B004 within 3 months after the permit's issuance to demonstrate compliance with the allowable mass emission rate for particulates.

99. KSU was required to conduct emissions testing on Emissions Unit B004 by December 10, 1998.

100. KSU failed to conduct emissions testing on Emissions Unit B004 by December 10, 1998.

101. KSU conducted emissions testing on Emissions Unit B004 on January 19, 1999.

102. KSU's failure to conduct emissions testing on Emissions Unit B004 within 3 months after the issuance of the Title V Permit is a violation of Section A.V.2 of Part III, Terms and Conditions for Emissions Unit B004, of the Title V Permit.

Count IX

103. Complainant incorporates paragraphs 1 through 102 of this Complaint, as if set forth in this paragraph.

104. Section A.II.2 of Part III, Terms and Conditions for Emissions Unit B004, of the Title V Permit (p. 19), states "[t]he pressure drop across the baghouse shall be maintained within the

range of 3 to 5 inches of water while the emissions unit is in operation."

105. KSU failed to maintain the pressure drop across the baghouse on Boiler B004 within the range of 3 to 5 inches of water while the boiler was in operation on the following days:

Calendar Year 1998:

November 3, November 6, November 11, November 12, November 13, November 14, December 24, December 25, December 26, December 27, December 28, December 29, 1998;

Calendar Year 1999:

January 4;

Calendar Year 2000:

December 10, December 11, December 12, December 13.

106. KSU's failure to maintain a pressure drop across the baghouse within the range of 3 to 5 inches of water while Boiler B004 was in operation is a violation of Section A.II.2 of Part III, Terms and Conditions for Emissions Unit B004, of the Title V Permit.

Count X

107. Complainant incorporates paragraphs 1 through 106 of this Complaint, as if set forth in this paragraph.

108. Section A.III.3 of Part III, Terms and Conditions for Emissions Unit B001, of the Title V Permit (p. 11) requires KSU, among other things, "to read and record the opacities of the emissions from this emissions unit on a daily basis, for a minimum of 12 consecutive minutes while the emissions unit is in operation."

109. KSU failed to read and record opacity at the exhaust stack of Boiler B001 from September 10, 1998 through

November 6, 1998 and on January 8, 1999, January 19, 1999, April 7, 1999, and June 14, 1999.

110. KSU's failure to read and record the opacities of the emissions from Boiler B001 is a violation of Section A.III.3 of Part III, Terms and Conditions for Emissions Unit B001, of the Title V Permit.

Proposed Civil Penalty

111. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

112. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$293,755. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

113. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

114. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

115. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

116. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Ms. Christine Liszewski to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Liszewski at (312) 886-4670. Ms. Liszewski's address is:

Christine Liszewski (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Penalty Payment

117. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Ms. Liszewski and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

118. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 119 through 124 below.

Answer

119. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 115, above, and must serve copies of the written answer on the other parties.

120. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

121. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

122. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

123. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 118 above.

124. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

125. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Ms. Liszewski at the address or phone number specified in paragraph 116, above.

126. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing

a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

127. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

9/13/2002
Date



Stephen Rothblatt, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CAA-05- 2002-0 013

In the Matter of Kent State University
Docket No.

CAA-05- 2002-0013

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number **CAA-05- 2002-0013** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Dr. Carol A. Cartwright, President
Kent State University
Kent, Ohio 44242

on the 16th day of September 2002.

Loretta Shaffer
Loretta Shaffer
AECAS (OH/MN)

CERTIFIED MAIL RECEIPT NUMBER: 799 3400 0000 9591 7584